IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.Rev.Pet.No. 356 of 1999()

CRA.45/1997 of ADDL.SESSIONS COURT, PARAVUR
CC.509/1992 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVUR
(CRMP 2300/95)

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REVN. PETITIONER:

J.A. JOY,
THEKKENEDATH VESSAL HOUSE,
PARAVOOR.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
CIRCLE INSPECTOR OF POLICE,
N. PARAVOOR (CRIME NO.186/91)

2. ASSISTANT ENGINEER,
ELECTRICAL SECTION, CHERAI.

BY ADV. SRI.P.SANTHALINGAM, SC, KSEB
BY PUBLIC PROSECUTOR SRI. C.K. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 1/ 02 / 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl.R.P. No.356 of 1999

Dated this the 1st day of February, 2007.

ORDER

This revision is filed against the dismissal of a petition filed under section 452 of the Code of Criminal Procedure ('the Code' for short).

2. The petitioner is PW10 in C.C.No/509 of 1992. According to prosecution, PW10 purchased copper conductors from the accused and converted them into copper sheets. Pursuant to a confession statement given by the accused in that case, and as led by him PW15 seized MO2 series copper sheets weighing 48 Kgs. from PW10, as produced by the latter.

3. According to petitioner, he is the owner of the disputed property and he had purchased the articles from A.K.P. Metals. He also stated in the petition filed by him under section 452 of the Code that he can produce the purchase bills and invoice and other documents to prove the same. According to petitioner, he was compelled to produce copper sheets etc. at the instance of the police. He denied having purchased any stolen articles from the accused in

this case. In the above circumstances, petitioner sought for an order to release the property to him.

4. The trial court found that the property belongs to Kerala State Electricity Board and that the available records show that PW10 is a habitual purchaser of stolen goods and that he had purchased stolen articles in this case. It was also observed that he has purchased stolen artilces from the accused in four other cases which are detailed in the order. (The source of such information is not discernible from the order). According to trial court, evidence available on record shows that PW10 purchased copper conductors and converted them into copper sheets. The property belongs to KSEB and hence it was ordered to be released to the Assistant Engineer, Kerala State Electricity Board, Cherai. The petition filed by the petitioner was dismissed. The said order is under challenge in this revision.

5. At the very outset, it was pointed out that the petition was disposed of without making the owner of the property, a party to the petition. The trial court found that the property belongs to KSEB and hence, as rightly pointed out, the KSEB ought to have been impleaded and heard before an order is passed. Learned Standing Counsel for the respondent-Kerala State Electricity Board submitted

that the Board neither made a party nor heard in the matter by the trial court and hence, an order passed in this case may not be quite sustainable. If this Court is interfering in the order in this revision, the illegality pointed out will be further perpetuated. I can only accept this argument. This fact was not taken into account by the appellate court also. In the light of this illegality, I am not considering any o the averments raised by learned counsel for revision petitioner on merit.

6. Hence, the order under challenge is set aside and it is remanded to the trial court for fresh consideration and disposal in accordance with law, after impleading the owner of the property. Both sides shall be given opportunity of hearing and, if necessary, to adduce evidence also.

7. The case being one of the year 1992, the trial court shall dispose of the matter within one month from the date of receipt of a copy of this order. The parties shall appear before the trial court on 12.2.2007.

Petition is disposed of accordingly.

K. HEMA, JUDGE.

Krs.